

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE DRS85070-MC~~x~~-99 (2/20)

Short Title: No Credit for Obscene Films. (Public)

Sponsors: Senator Berger of Rockingham.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE ADDITIONAL OVERSIGHT OF THE TAX CREDIT FOR  
3 QUALIFYING EXPENSES OF A PRODUCTION COMPANY AND TO LIMIT THE  
4 CREDIT FOR COMPENSATION OF INDIVIDUALS RECEIVING PAYMENT TO  
5 FIVE HUNDRED THOUSAND DOLLARS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 105-130.47 reads as rewritten:

8 "§ 105-130.47. Credit for qualifying expenses of a production company.

9 (a) Definitions. – The following definitions apply in this section:

10 (1) Highly compensated individual. – An individual who directly or indirectly  
11 receives compensation in excess of ~~one million dollars (\$1,000,000)~~five  
12 hundred thousand dollars (\$500,000) for personal services with respect to a  
13 single production. An individual receives compensation indirectly when a  
14 production company pays a personal service company or an employee  
15 leasing company that pays the individual.

16 (2) Live sporting event. – A scheduled sporting competition, game, or race that  
17 is not originated by a production company, but originated solely by an  
18 amateur, collegiate, or professional organization, institution, or association  
19 for live or tape-delayed television or satellite broadcast. A live sporting  
20 event does not include commercial advertising, an episodic television series,  
21 a television pilot, a music video, a motion picture, or a documentary  
22 production in which sporting events are presented through archived  
23 historical footage or similar footage taken at least 30 days before it is used.

24 (2a) MPAA. – The Motion Picture Association of America, Inc.

25 (3) Production company. – Defined in G.S. 105-164.3.

26 (4) Qualifying expenses. – The sum of the following amounts spent in this State  
27 by a production company in connection with a production, less the amount  
28 in excess of ~~one million dollars (\$1,000,000)~~five hundred thousand dollars  
29 (\$500,000) paid to a highly compensated individual:

30 a. Goods and services leased or purchased. For goods with a purchase  
31 price of twenty-five thousand dollars (\$25,000) or more, the amount  
32 included in qualifying expenses is the purchase price less the fair  
33 market value of the good at the time the production is completed.



1           b.       Compensation and wages on which withholding payments are  
2                   remitted to the Department of Revenue under Article 4A of this  
3                   Chapter.

4           c.       The cost of production-related insurance coverage obtained on the  
5                   production. Expenses for insurance coverage purchased from a  
6                   related member are not qualifying expenses.

7           (5)       Related member. – Defined in G.S. 105-130.7A.

8           (b)       Credit. – A taxpayer that is a production ~~company and company~~, has qualifying  
9                   expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~  
10                  production, has satisfied the notification requirements of subsections (j) and (j1) of this section,  
11                  and, if the production is a feature film, has received a rating from the MPAA for a production is  
12                  allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the  
13                  production company's qualifying expenses. For the purposes of this section, in the case of an  
14                  episodic television series, an entire season of episodes is one production. The credit is  
15                  computed based on all of the taxpayer's qualifying expenses incurred with respect to the  
16                  production, not just the qualifying expenses incurred during the taxable year.

17           (c)       Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and  
18                   G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does  
19                   not distribute the credit among any of its owners. The pass-through entity is considered the  
20                   taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a  
21                   pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity,  
22                   the credit allowed under this section does not affect the entity's payment of tax on behalf of its  
23                   owners.

24           (d)       Return. – A taxpayer may claim the credit allowed by this section on a return filed  
25                   for the taxable year in which the production activities are completed. The return must state the  
26                   name of the production, a description of the production, and a detailed accounting of the  
27                   qualifying expenses with respect to which a credit is claimed.

28           (e)       Credit Refundable. – If the credit allowed by this section exceeds the amount of tax  
29                   imposed by this Part for the taxable year reduced by the sum of all credits allowable, the  
30                   Secretary must refund the excess to the taxpayer. The refundable excess is governed by the  
31                   provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this  
32                   Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable  
33                   credits are subtracted before refundable credits.

34           (f)       Limitations. – The amount of credit allowed under this section with respect to a  
35                   production that is a feature film may not exceed seven million five hundred thousand dollars  
36                   (\$7,500,000). No credit is allowed under this section for any production that satisfies one of the  
37                   following conditions:

38                   (1)       It is political advertising.

39                   (2)       It is a television production of a news program or live sporting event.

40                   (3)       It contains material that is obscene, as defined in G.S. 14-190.1.

41                   (4)       It is a radio production.

42                   (5)       It has received a rating of 'NC-17' by the MPAA.

43           (g)       Substantiation. – A taxpayer allowed a credit under this section must maintain and  
44                   make available for inspection any information or records required by the Secretary of Revenue.  
45                   The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The  
46                   Secretary ~~may~~shall consult with the North Carolina Film Office of the Department of  
47                   Commerce and the regional film commissions in order to determine the amount of qualifying  
48                   expenses.

49           (h)       Report. – The Department of Revenue must publish by May 1 of each year the  
50                   following information, itemized by taxpayer for the 12-month period ending the preceding  
51                   December 31:

- 1 (1) The location of sites used in a production for which a credit was claimed.
- 2 (2) The qualifying expenses for which a credit was claimed, classified by
- 3 whether the expenses were for goods, services, or compensation paid by the
- 4 production company.
- 5 (3) The number of people employed in the State with respect to credits claimed.
- 6 (4) The total cost to the General Fund of the credits claimed.
- 7 (5) The identity of the production company claiming the credit.
- 8 (6) The title of the production at the time the credit is claimed.

9 (i) Repealed by Session Laws 2006-220, s. 2, effective for taxable years beginning on  
10 or after January 1, 2007.

11 (j) NC Film Office. – To claim a credit under this section, a taxpayer (i) must notify the  
12 Division of Tourism, Film, and Sports Development in the Department of Commerce of the  
13 taxpayer's intent to claim the production tax credit. ~~The notification must include the title of the~~  
14 ~~production, the name of the production company, a financial contact for the production~~  
15 ~~company, the proposed dates on which the production company plans to begin filming the~~  
16 ~~production, and any other information required by the Division. For productions that have~~  
17 ~~production credits, a taxpayer claiming a credit under this section must acknowledge in the~~  
18 ~~production credits both the North Carolina Film Office and the regional film office responsible~~  
19 ~~for the geographic area in which the filming of the production occurred.~~ credit and (ii) must  
20 acknowledge, in productions that have production credits, both the North Carolina Film Office  
21 and the regional film office responsible for the geographic area in which the filming of the  
22 production occurred. The North Carolina Film Office shall evaluate the notification to  
23 determine whether the production satisfies the requirements of this section and that it has  
24 serious artistic merit taking into consideration general standards of decency and respect for the  
25 diverse beliefs and values of the citizens of North Carolina. If the North Carolina Film Office  
26 determines that the production satisfies the requirements of this section, the Office shall issue a  
27 preapproval certificate to the production company. A preapproval certificate expresses the  
28 opinion of the North Carolina Film Office as to the eligibility of the production for the credit  
29 and is not binding upon the Department of Revenue. The notification must include each of the  
30 following:

- 31 (1) The title of the production.
- 32 (2) The name of the production company.
- 33 (3) A financial contact for the production company.
- 34 (4) The proposed dates on which the production company plans to begin filming  
35 the production.
- 36 (5) The total budget for the production.
- 37 (6) The amount of the budget to be spent in the State, including a description of  
38 the amount to be spent in the State on crew, equipment, and location rentals  
39 that are based in the State.
- 40 (7) The number of crew to be involved in the production that is based in the  
41 State.
- 42 (8) The days to be spent on production in this State and at other locations.
- 43 (9) A copy of the preproduction script or a synopsis of the script.
- 44 (10) A statement that the production, in its current proposed form, has not been  
45 denied a tax credit in this State or any other jurisdiction for any reason other  
46 than failing to meet an expenditure threshold.
- 47 (11) Any other information required by the Division.

48 (j1) Postproduction Review of Notification. – After a production has been completed,  
49 the Department of Revenue must review the notification required under subsection (j) of this  
50 section, preapproval certificate, the final budget, and the postproduction script. The Department  
51 must make a determination as to whether the final production differs substantially from the

1 production described in the notification and as to whether it has serious artistic merit taking  
2 into consideration general standards of decency and respect for the diverse beliefs and values of  
3 the citizens of North Carolina. The Department of Revenue must make a final determination as  
4 to the eligibility of the production for a credit under this section and as to the amount of the  
5 credit.

6 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after  
7 January 1, 2014."

8 **SECTION 2.** G.S. 105-151.29 reads as rewritten:

9 **"§ 105-151.29. Credit for qualifying expenses of a production company.**

10 (a) Definitions. – The following definitions apply in this section:

11 (1) Highly compensated individual. – An individual who directly or indirectly  
12 receives compensation in excess of ~~one million dollars (\$1,000,000)~~five  
13 hundred thousand dollars (\$500,000) for personal services with respect to a  
14 single production. An individual receives compensation indirectly when a  
15 production company pays a personal service company or an employee  
16 leasing company that pays the individual.

17 (2) Live sporting event. – A scheduled sporting competition, game, or race that  
18 is not originated by a production company, but originated solely by an  
19 amateur, collegiate, or professional organization, institution, or association  
20 for live or tape-delayed television or satellite broadcast. A live sporting  
21 event does not include commercial advertising, an episodic television series,  
22 a television pilot, a music video, a motion picture, or a documentary  
23 production in which sporting events are presented through archived  
24 historical footage or similar footage taken at least 30 days before it is used.

25 (2a) MPAA. – The Motion Picture Association of America, Inc.

26 (3) Production company. – Defined in G.S. 105-164.3.

27 (4) Qualifying expenses. – The sum of the following amounts spent in this State  
28 by a production company in connection with a production, less the amount  
29 paid in excess of ~~one million dollars (\$1,000,000)~~five hundred thousand  
30 dollars (\$500,000) to a highly compensated individual:

31 a. Goods and services leased or purchased. For goods with a purchase  
32 price of twenty-five thousand dollars (\$25,000) or more, the amount  
33 included in qualifying expenses is the purchase price less the fair  
34 market value of the good at the time the production is completed.

35 b. Compensation and wages on which withholding payments are  
36 remitted to the Department of Revenue under Article 4A of this  
37 Chapter.

38 c. The cost of production-related insurance coverage obtained on the  
39 production. Expenses for insurance coverage purchased from a  
40 related member are not qualifying expenses.

41 (5) Related member. – Defined in G.S. 105-130.7A.

42 (b) Credit. – A taxpayer that is a production ~~company and~~company, has qualifying  
43 expenses of at least two hundred fifty thousand dollars (\$250,000) with respect to a ~~production~~  
44 production, has satisfied the notification requirements of subsections (j) and (j1) of this section,  
45 and, if the production is a feature film, has received a rating from the MPAA for a production  
46 allowed a credit against the taxes imposed by this Part equal to fifteen percent (15%) of the  
47 production company's qualifying expenses. For the purposes of this section, in the case of an  
48 episodic television series, an entire season of episodes is one production. The credit is  
49 computed based on all of the taxpayer's qualifying expenses incurred with respect to the  
50 production, not just the qualifying expenses incurred during the taxable year.

1 (c) Pass-Through Entity. – Notwithstanding the provisions of G.S. 105-131.8 and  
2 G.S. 105-269.15, a pass-through entity that qualifies for the credit provided in this section does  
3 not distribute the credit among any of its owners. The pass-through entity is considered the  
4 taxpayer for purposes of claiming the credit allowed by this section. If a return filed by a  
5 pass-through entity indicates that the entity is paying tax on behalf of the owners of the entity,  
6 the credit allowed under this section does not affect the entity's payment of tax on behalf of its  
7 owners.

8 (d) Return. – A taxpayer may claim the credit allowed by this section on a return filed  
9 for the taxable year in which the production activities are completed. The return must state the  
10 name of the production, a description of the production, and a detailed accounting of the  
11 qualifying expenses with respect to which a credit is claimed.

12 (e) Credit Refundable. – If the credit allowed by this section exceeds the amount of tax  
13 imposed by this Part for the taxable year reduced by the sum of all credits allowable, the  
14 Secretary must refund the excess to the taxpayer. The refundable excess is governed by the  
15 provisions governing a refund of an overpayment by the taxpayer of the tax imposed in this  
16 Part. In computing the amount of tax against which multiple credits are allowed, nonrefundable  
17 credits are subtracted before refundable credits.

18 (f) Limitations. – The amount of credit allowed under this section with respect to a  
19 production that is a feature film may not exceed seven million five hundred thousand dollars  
20 (\$7,500,000). No credit is allowed under this section for any production that satisfies one of the  
21 following conditions:

- 22 (1) It is political advertising.
- 23 (2) It is a television production of a news program or live sporting event.
- 24 (3) It contains material that is obscene, as defined in G.S. 14-190.1.
- 25 (4) It is a radio production.
- 26 (5) It has received a rating of 'NC-17' by the MPAA.

27 (g) Substantiation. – A taxpayer allowed a credit under this section must maintain and  
28 make available for inspection any information or records required by the Secretary of Revenue.  
29 The taxpayer has the burden of proving eligibility for a credit and the amount of the credit. The  
30 Secretary ~~may~~ shall consult with the North Carolina Film Office of the Department of  
31 Commerce and the regional film commissions in order to determine the amount of qualifying  
32 expenses.

33 (h) Report. – The Department of Revenue must publish by May 1 of each year the  
34 following information, itemized by taxpayer for the 12-month period ending the preceding  
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38 whether the expenses were for goods, services, or compensation paid by the  
39 production company.
- 40 (3) The number of people employed in the State with respect to credits claimed.
- 41 (4) The total cost to the General Fund of the credits claimed.
- 42 (5) The identity of the production company claiming the credit.
- 43 (6) The title of the production at the time the credit is claimed.

44 (i) Repealed by Session Laws 2006-220, s. 4, effective for taxable years beginning on  
45 and after January 1, 2007.

46 (j) NC Film Office. – To claim a credit under this section, a taxpayer (i) must notify the  
47 Division of Tourism, Film, and Sports Development in the Department of Commerce of the  
48 taxpayer's intent to claim the production tax credit. ~~The notification must include the title of the  
49 production, the name of the production company, a financial contact for the production  
50 company, the proposed dates on which the production company plans to begin filming the  
51 production, and any other information required by the Division. For productions that have~~

1 ~~production credits, a taxpayer claiming a credit under this section must acknowledge in the~~  
2 ~~production credits both the North Carolina Film Office and the regional film office responsible~~  
3 ~~for the geographic area in which the filming of the production occurred.~~ credit and (ii) must  
4 acknowledge, in productions that have production credits, both the North Carolina Film Office  
5 and the regional film office responsible for the geographic area in which the filming of the  
6 production occurred. The North Carolina Film Office shall evaluate the notification to  
7 determine whether the production satisfies the requirements of this section and that it has  
8 serious artistic merit taking into consideration general standards of decency and respect for the  
9 diverse beliefs and values of the citizens of North Carolina. If the North Carolina Film Office  
10 determines that the production satisfies the requirements of this section, the Office shall issue a  
11 preapproval certificate to the production company. A preapproval certificate expresses the  
12 opinion of the North Carolina Film Office as to the eligibility of the production for the credit  
13 and is not binding upon the Department of Revenue. The notification must include each of the  
14 following:

- 15 (1) The title of the production.
- 16 (2) The name of the production company.
- 17 (3) A financial contact for the production company.
- 18 (4) The proposed dates on which the production company plans to begin filming  
19 the production.
- 20 (5) The total budget for the production.
- 21 (6) The amount of the budget to be spent in the State, including a description of  
22 the amount to be spent in the State on crew, equipment, and location rentals  
23 that are based in the State.
- 24 (7) The number of crew to be involved in the production that is based in the  
25 State.
- 26 (8) The days to be spent on production in this State and at other locations.
- 27 (9) A copy of the preproduction script or a synopsis of the script.
- 28 (10) A statement that the production, in its current proposed form, has not been  
29 denied a tax credit in this State or any other jurisdiction for any reason other  
30 than failing to meet an expenditure threshold.
- 31 (11) Any other information required by the Division.

32 (j1) Postproduction Review of Notification. – After a production has been completed,  
33 the Department of Revenue must review the notification required under subsection (j) of this  
34 section, preapproval certificate, the final budget, and the postproduction script. The Department  
35 must make a determination as to whether the final production differs substantially from the  
36 production described in the notification and as to whether it has serious artistic merit taking  
37 into consideration general standards of decency and respect for the diverse beliefs and values of  
38 the citizens of North Carolina. The Department of Revenue must make a final determination as  
39 to the eligibility of the production for a credit under this section and as to the amount of the  
40 credit.

41 (k) Sunset. – This section is repealed for qualifying expenses occurring on or after  
42 January 1, 2014."

43 **SECTION 3.** This act is effective for taxable years beginning on or after January 1,  
44 2009.